

“Covered Person” Definition will Hinder Law Enforcement

Argument: This bill will interfere with law enforcement because criminals might be able to cloak themselves in the privilege by saying they are "covered persons," and thus will escape punishment.

Response:

- This argument is unfounded. A person is covered only with respect to documents or information obtained "as part of engaging in journalism." Sec. 8(6). In turn, the term "journalism" is defined as "the regular gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public." Sec. 4(2).
- A person could not cloak himself in the privilege just by claiming he is a "journalist"; instead, the Court would evaluate the evidence to determine if the person in fact fits the definition. Courts are fully capable of making these decisions; they do it all the time.
- If a person were to commit a crime and post a blog about the crime, the person would not fit within the definition, which requires "regular" gathering and dissemination of news.
- By the same token, a full-time professional journalist who embezzled money would not be covered, because a court could easily conclude that the criminal conduct was not "part of engaging in journalism" and thus falls entirely outside the Act.
- Moreover, the Manager's Amendment contains an exception for any situation in which a journalist obtains information "as a result of the eyewitness observations of criminal conduct." Sec 3(a).
- In short, the Act has been appropriately drafted to prevent its being invoked by a criminal (or an eyewitness to crime) to thwart law enforcement.
- If this criticism of the FFIA were valid, then criminals in 49 states would be getting away with murder all the time. Forty-nine states recognize the existence of a reporter's privilege by statute or common law, and yet those privilege laws have not prevented the states from enforcing their laws, by enabling every criminal to claim "journalist" and block the investigation of a crime.
- If a shield law were so readily vulnerable to abuse as the critics claim, we would not have seen 34 states attorney generals filing a brief in the Supreme Court, decrying the lack of a federal shield law.